

120 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

East Texas Electric Cooperative, Inc.  
Tex-La Electric Cooperative of Texas, Inc.  
Deep East Texas Electric Cooperative, Inc.

Docket No. EL07-27-001

Southwest Power Pool, Inc.

Docket No. ER07-396-001

ORDER ON REHEARING

(Issued July 31, 2007)

1. In this order, the Commission addresses the request for rehearing filed by East Texas Cooperative, Inc. (East Texas), Tex-La Electric Cooperative of Texas, Inc. (Tex-La), and Deep East Texas Electric Cooperative, Inc. (Deep East) (collectively the Cooperatives) of the February 27, 2007, Commission Order accepting revisions to Southwest Power Pool, Inc.'s (SPP) open access transmission tariff (tariff or OATT) and establishing hearing and settlement judge procedures.<sup>1</sup> As discussed below, the Commission denies the Cooperatives' request for rehearing.

**I. Background**

2. East Texas and Tex-La are generation and transmission cooperatives that are currently members of SPP, but do not have Transmission Owner status<sup>2</sup> under the SPP

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<sup>1</sup> *East Texas Elec. Coop., Inc.*, 118 FERC ¶ 61,153 (2007) (February 27, 2007 Order).

<sup>2</sup> The SPP FERC Electric Tariff, Fifth Revised Volume No. 1, Original Sheet No. 31, section 1.45a, defines Transmission Owner as:

Each member of SPP whose transmission facilities (in whole or in part) make up the Transmission System and has executed a membership agreement as a Transmission Owner. Those Transmission Owners that are not regulated by the

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tariff. Deep East is a distribution cooperative member of Tex-La and is not a member of SPP. The Cooperatives are all borrowers from the Rural Utilities Service, and therefore, are not subject to the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).<sup>3</sup> Nevertheless, the courts have held that the Commission "may analyze and consider the rates of non-jurisdictional utilities to the extent that those rates affect jurisdictional transactions."<sup>4</sup>

3. The Cooperatives state that since their entrance into SPP, East Texas and Tex-La have planned to change their membership status to Transmission Owners and turn functional control of the Cooperatives' transmission facilities over to SPP.<sup>5</sup> The Cooperatives explain that their efforts to change their membership status were hindered by lack of clarity concerning which of the Cooperatives' facilities would qualify as Transmission Facilities under SPP's tariff<sup>6</sup> and the absence of a mechanism in the tariff to allocate transmission revenues among multiple Transmission Owners in a single pricing zone.

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Commission shall not become subject to Commission regulation by virtue of their status as Transmission Owners under this Tariff; provided, however, that service over their facilities classified as transmission and covered by the Tariff shall be subject to Commission regulation.

<sup>3</sup> Energy Policy Act of 2005 § 1291(c), 119 Stat. 985 (amendment to FPA § 201(f) codifying exemption from FPA jurisdiction for electric cooperatives with RUS financing and electric cooperatives selling less than 4 million MWh per year).

<sup>4</sup> *Pacific Gas & Electric Co. v. FERC*, 306 F.3d 1112 at 1114 (D.C. Cir. 2002).

<sup>5</sup> Deep East is not a member of SPP and does not plan to become one. However, if Tex-La becomes a Transmission Owner in SPP, Deep East plans to turn functional control of its transmission facilities over to SPP and have Tex-La serve as the Transmission Owner in SPP with respect to the Deep East facilities based on their agency relationship.

<sup>6</sup> To become Transmission Owners in the SPP tariff, the Cooperatives' facilities must qualify as Transmission Facilities under the definition set forth in Attachment AI of the SPP tariff. *See* SPP FERC Electric Tariff, Fifth Revised Volume No. 1, Original Sheet No. 1137, Attachment AI, section IV (stating that within 3 years of Commission acceptance of Attachment AI, each Transmission Owner must file a request based on the Attachment ... for determination as to which of its facilities are Transmission Facilities).

4. SPP recently incorporated a new definition of Transmission Facilities into its tariff as Attachment AI,<sup>7</sup> which was approved by the Commission in *Southwest Power Pool*.<sup>8</sup> In addition, SPP recently developed a new mechanism for allocating transmission revenues among multiple Transmission Owners in a single SPP pricing zone, which was also approved in *Southwest Power Pool*.<sup>9</sup>

5. With these recent changes to SPP's tariff, the Cooperatives submitted an application to SPP in early 2005 to change the membership status of ETEC and Tex-La to Transmission Owners, and to turn functional control of the Cooperatives' facilities that meet the definition of Transmission Facilities over to SPP. On April 25, 2006, the SPP Members Committee and the Board of Directors approved the Cooperatives' application to become Transmission Owners and the placement of the Cooperatives' facilities under the SPP tariff.

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<sup>7</sup> Section II(1) of Attachment AI of the SPP tariff provides (in relevant part), that Transmission Facilities shall include all facilities that meet the following criteria:

All existing non-radial power lines, substations, and associated facilities, operated at 60 kV or above, plus all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers [that are] not Affiliates of each other.

Section III provides that the following facilities shall not constitute Transmission Facilities:

1. Generator step-up transformers and generator leads;
2. Radial lines from a generating system to a single substation or switching station on the Transmission System; and
3. Direct Assignment Facilities.

<sup>8</sup> *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005), *order on reh'g*, 114 FERC ¶ 61,242 (2006) (*Southwest Power Pool*).

<sup>9</sup> *Id.* See Attachment L of the SPP tariff.

6. On December 22, 2006, the Cooperatives filed in Docket No. EL07-27-000 for Commission approval to include their annual transmission revenue requirements in SPP's tariff.<sup>10</sup> Additionally, in Docket No. ER07-396-000, SPP requested Commission approval of the tariff changes necessary to incorporate the Cooperatives' rates into the SPP tariff, and other changes reflecting the Cooperatives' requested Transmission Owner membership status.

7. American Electric Power Service Corporation (AEP) protested the Cooperatives' filing. AEP asserted that none of the facilities the Cooperatives seek to classify as Transmission Facilities under the SPP tariff qualify as Transmission Facilities. In coming to this conclusion, AEP applied the integration test as set forth in *Mansfield v. New England*.<sup>11</sup> AEP contended that the Cooperative facilities should be classified as radial and Direct Assignment facilities.<sup>12</sup>

8. In the February 27, 2007 Order, the Commission consolidated the revenue requirements proceeding and SPP's tariff filing proceeding.<sup>13</sup> The Commission also approved SPP's tariff revisions and set for hearing and settlement judge procedures the Cooperatives' proposed revenue requirements and the issue of whether the Cooperatives' facilities are Transmission Facilities.

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<sup>10</sup> If accepted, the Cooperatives' revenue requirements will become a component of the SPP Pricing Zone 1 (AEP Pricing Zone) rate.

<sup>11</sup> See *Mansfield Mun. Elec. Dept. v. New England Power Co.*, 94 FERC ¶ 63,023, *aff'd*, 97 FERC ¶ 61,134 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002) (setting forth a five part test to determine whether radial lines exhibit any degree of integration).

<sup>12</sup> AEP noted that the SPP tariff provides for regional recovery of the cost of Transmission Facilities. AEP further explains that Direct Assignment Facilities and radial transmission facilities (unless those facilities service two or more unaffiliated eligible customers) are excluded from the definition of Transmission Facilities under Attachment AI to the SPP tariff. AEP argues that if the Commission accepts the Cooperatives filing, AEP will bear the majority of the cost of facilities the Cooperatives seek to classify as Transmission Facilities because AEP serves the majority of the load in that zone. AEP contends that this is unjust and unreasonable because the facilities at issue were built for and benefit only the Cooperatives and a few municipal utilities not affiliated with AEP.

<sup>13</sup> *East Texas Elec. Coop., Inc.*, 118 FERC ¶ 61,153 (2007).

## II. Rehearing Request

9. The Cooperatives object to the Commission's decision to set for hearing the issue of whether the Cooperatives' facilities meet the definition of Transmission Facilities in Attachment AI of SPP's tariff. The Cooperatives argue that the Commission should decide the issue based on the uncontested evidence in the written record demonstrating that the Cooperatives' facilities qualify as Transmission Facilities. The Cooperatives argue that the sworn testimony of George Kithas, an electrical engineer with knowledge of the Cooperatives' facilities, explains which of the facilities meet the definition of Transmission Facilities.<sup>14</sup> The Cooperatives assert that, in contrast, AEP offered no facts or affidavit to support its assertion that the Holly-Black Ankle-Hemphill 138 kV line segment might not meet the definition of Transmission Facilities because it appears to serve only one municipal customer. The Cooperatives argue that there is uncontested factual support that all of the facilities the Cooperatives seek to include in the SPP tariff meet the tariff's definition of Transmission Facilities.<sup>15</sup>

10. Further, the Cooperatives argue that their facilities do not meet the definition of Direct Assignment Facilities,<sup>16</sup> as AEP contended in its protest. The Cooperatives state that the facilities they seek to include in the SPP tariff were not constructed by a Transmission Owner for the sole use or benefit of a separate Transmission Customer. Rather, the Cooperatives state, the facilities were built by the Cooperatives themselves.<sup>17</sup> Thus, the Cooperatives argue that there would be no reason for SPP to directly assign the

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<sup>14</sup> See the Cooperatives' Request for Rehearing at 8.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> Section 1.10 of the SPP tariff defines Direct Assignment Facilities as:

Facilities or portions of facilities that are constructed by any Transmission Owner(s) for the sole use/benefit of a particular Transmission Customer or a particular group of customers or a particular Generator Interconnection Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreements that govern service to the Transmission Customer(s) and Generation Interconnection Customer(s) and shall be subject to Commission approval.

<sup>17</sup> See the Cooperatives' Request for Rehearing at 10.

cost of the Cooperatives' own facilities to the Cooperatives. Further, the Cooperatives state that if the facilities were Direct Assignment Facilities, the parties would have listed them in the network integration service agreement between the Cooperatives and SPP. Because they are not included in this agreement, the Cooperatives argue that the facilities could not have been directly assigned by SPP to the Cooperatives to provide SPP transmission service to the Cooperatives under the SPP tariff.<sup>18</sup>

11. The Cooperatives also assert that the definition of Transmission Facilities in the SPP tariff says nothing about an integration test, and the Commission cannot look beyond the plain meaning of the tariff's terms unless the tariff is ambiguous. In addition, the Cooperatives argue that AEP's mere assertions that the Cooperatives' facilities fail to meet the integration standard, which has no basis in the tariff, falls short of the adequate proffer of evidence required to justify a hearing.<sup>19</sup> Finally, the Cooperatives argue that looking outside the SPP tariff to apply an integration test to the Cooperatives' facilities, rather than applying the definition of Transmission Facilities set forth in the tariff, runs contrary to SPP's reasonable interpretation of its own tariff.<sup>20</sup>

### **III. Discussion**

12. We deny the request for rehearing. The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.<sup>21</sup> The

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<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> *Id.* at 13-14.

<sup>21</sup> See, e.g., *Stowers Oil and Gas Company* 27 FERC ¶ 61,001 (1984) (Commission is master of its own calendar and procedures); *Ameren Energy Generating Company*, 108 FERC ¶ 61,081 at P 23 (2004) ("The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings. . . . Based on the written submissions in this proceeding, we concluded that there were issues of material fact concerning the competitive effect of Applicants' filing that were best resolved through a trial-type evidentiary hearing"); *TRANSLink Development Company, LLC*, 103 FERC ¶ 61,208 at P 15 (2003); *accord Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003), *citing Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998) (administrative agencies enjoy broad discretion to manage their own dockets); *FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326, 333 (1976) (agencies can determine how best proceed to develop the needed evidence); *Richmond* (continued)

arguments set forth by the Cooperatives do not persuade us that the disputed matters can be resolved summarily, and we find that the issues in dispute are best resolved through the hearing and settlement judge procedures previously established.

13. Based on our review of the information provided by the Cooperatives, we determined that it was not possible to determine whether the facilities in question meet the criteria for Transmission Facilities as set forth in SPP's tariff. This matter involves questions of fact that would be best resolved in a hearing, if settlement discussions fail. Accordingly, we will deny the Cooperatives' request for rehearing on this issue and affirm the determination in the February 27 Order setting this matter for hearing and settlement judge procedures.

The Commission orders:

The Cooperatives' request for rehearing is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.